(15,958.)

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1895.

No. 668.

THE BANK OF COMMERCE AND JAMES A. OMBERG, PLAINTIFFS IN ERROR,

vs.

THE STATE OF TENNESSEE, FOR THE USE OF THE CITY OF MEMPHIS.

IN ERROR TO THE SUPREME COURT OF THE STATE OF TENNESSEE.

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a Supreme Court of Tennessee, at Jackson.

STATE OF TENNESSEE, Use, etc., *vs.* THE BANK OF COMMERCE. } No. 54.

F. T. Edmondson and Metcalf & Walker for complainants. Morgan & McFarland, Julius A. Taylor, and W. H. Carroll for defendants.

Filed March 30, 1895.

JOHN W. BUFORD, *Clerk*,
By JNO. W. BUFORD, JR.,
Dep'ty Clk.

1 STATE OF TENNESSEE, *Shelby County.*

Chancery Court of Shelby County.

Be it remembered that at a term of the chancery court of Shelby county, State aforesaid, began and held at the court-house, in the city of Memphis, in and for said county, on Monday, the 1st day of October, 1894, the same being the first day in October, 1894—present and presiding, the Hon. J. S. Galloway, sitting by interchange with the Hon. Sterling Pierson, chancellor of said court—the following proceedings were had, to wit:

STATE OF TENNESSEE, &c., *vs.* BANK OF COMMERCE. } 8092, R. D. Original Bill. Filed 22nd Day of Oct., 1891.

2 To the Hon. W. D. Beard, chancellor of the chancery court of Shelby county, Tennessee:

Complainants respectfully state and show unto your honor as follows, to wit:

I.

By an act of the legislature passed February 29th, 1856, Benjamin Chandler and his associates were created a body politic and corporate under the name of the Chattanooga Savings Institution, with the usual powers of a banking company, the business of said company being located, under the charter, at the city of Chattanooga, in Tennessee. By subsequent acts of the legislature of the State said institution was authorized to remove its situs to the city of Memphis, Tennessee, and its name was first changed to
3 the Savings Bank of Memphis and afterwards to the Bank of Commerce, the last change in the name being made by an act passed March 12th, 1873.

II.

Complainants are advised that under certain litigation heretofore arising between the State and said bank the supreme court of the State, in a case entitled State *vs.* Butler and reported in 2nd Pickle, 614, determined that the bank was in all respects organized under and had all the powers, privileges, and immunities expressed in the charter of said Chattanooga Savings Institution.

By the 3rd section of said charter it was enacted that said company should "pay to the State an annual tax of one-half of one per cent. on each share of capital stock, which shall be in lieu of all other taxes."

4 The capital stock of said defendant bank is $1,000,000.

III.

For the year 1891 the capital stock of said Bank of Commerce was assessed at the sum of $466,500.00.

The State of Tennessee for that year levied a total tax rate of $1.75 on every $100 of property in the city of Memphis for the use of said city, and the said defendant corporation, upon the theory that the shares of stock therein are exempt, is therefore indebted to the State for the use of said city or to said city directly in the sum of $8,163.75, the unpaid tax on the capital stock aforesaid for said year 1891, and the sum last aforesaid bears interest at the rate of six per cent. annually from the first day of May, 1891.

5 For the year 1887 the capital stock of the defendant company was duly assessed both by the regular assessing officer and by the county trustee at the sum of $342,000.00. The municipal tax rate for that year was $2.35, and the amount due from the defendant bank upon the theory that the shares of stock are exempt from taxation is the sum of $8,037.00, with interest from May 1, 1891.

IV.

By section 14 of the general revenue law of the State, passed in 1887, the same being chapter 2 of the acts of that year, it was enacted as follows, to wit:

"Be it further enacted, That this act shall not be so construed and shall not so operate as to exonerate or release from taxation
6 any company or corporation whose charter exempts stock and shares thereof from taxation; but it is hereby enacted that in all cases where such stock is exempted such company or corporation shall be assessed in such way as may be lawful, and in all cases in which by the terms or legal effect of the charter the shares of stock in any corporation are wholly or partially exempt from taxation, or in which a rate of taxation on the shares of stock is fixed and prescribed and declared to be in lieu of all other taxes, taxes for State, county, and municipal purposes shall be assessed and levied, at a rate uniform with the rate levied upon other taxable property,

upon the capital stock of said corporation, the value of which
7 capital stock shall be fixed and returned by the assessor as being equal to the aggregate market value of all the shares of stock in said corporation, including the net surplus."

But notwithstanding the provisions of said section the capital stock of said corporation was not assessed by the regular assessing officer for the years 1888, 1889, or 1890. Ascertaining this fact, the county trustee, as he was by law authorized to do, has fully assessed said capital stock for the years aforesaid as follows, to wit:

For the year 1888	$342,000 00
For the year 1889	399,000 00
For the year 1890	530,000 00

For the year 1888 the city tax ad valorem was $2.35 on the $100.

For the years 1889 and 1890 the ad valorem tax in and for
8 said city levied by the State was $2.35 on the $100, so that said defendant corporation for the years aforesaid, upon the theory that the shares of stock are exempt, is indebted to complainant City of Memphis or the State for its use in the sums following, to wit:

For the year 1888	$8,037 00
For the year 1889	9,376 00
For the year 1890	12,455 00

Each of the several amounts aforesaid bears interest from the first day of May of the year for which the tax was levied.

V.

The defendant corporation claimed that by virtue of its original charter and amendments thereto its capital stock is exempt from taxation.

9 Said capital stock is assessable and taxable under section 14 aforesaid of chapter 2 of the acts of 1887, the said section having been continuously in force since said enactment to the present time.

For the year 1872 the State, county of Shelby, city of Memphis, under the legislation then in force undertook to assess and tax as other property was assessed and taxed for that year the shares of stock in the hands of the stockholders of said company, its corporate name then being the Savings Bank of Memphis. This effort to tax said shares of stock was resisted by said shareholders. *Legislation* ensued in the second chancery court of Shelby county, Tennessee. The controversy was in that court determined in favor of the shareholders and against the power of the State, county,
10 or city to tax the shares of stock. An appeal therefrom was taken to the supreme court of the State, in which court the decree of said chancery court was reversed and a decree rendered in favor of the power to tax said stock, from which last decree a writ of error was sued out from the Supreme Court of the United States, and at the hearing in that court the decree of the supreme court of

Tennessee was reversed, the case remanded to that court with directions to enter a decree affirming the decree of the second chancery court of Shelby county and negativing the power to tax said shares of stock in the hands of the stockholders.

Complainants are advised that the capital stock in the
11 hands of the corporation and the shares of stock in the hands of the stockholders are separate and distinct subjects of taxation; that in the absence of any exemption clause it was within the power of the State, without subjecting such legislation to the objection of double taxation, to have taxed both the capital stock of the corporation and the shares of stock in the hands of the stockholders; that the charter tax, bonus, or whatever else it may be called of one-half of one per cent. to be paid to the State is a tax upon the shares of stock, and that the language, "in lieu of all taxes," means in lieu of all other taxes on the shares of stock. It has no effect, as complainant is advised and charges, to exempt the capital stock of the corporation from taxation.

VI.

12 Complainants are advised that under the provisions of the acts of 1887 aforesaid, which act, so far as is material to the questions here involved, has been continuously re-enacted by the legislature of the State, the capital stock of said corporation or the shares of stock in the hands of the stockholders therein is or are taxable. They are further advised that the immunity and exemption embraced or claimed to be embraced in the charter of said defendant corporation cannot operate to exempt both the shares of stock and the capital stock in the hands from taxation. Being advised and believing that both the corporation and its capital stock and the holders of the shares of stock could not successfully
13 claim exemption from taxation, the assessing officers of the State have from year to year since and including the year 1887 demanded of the proper officers of said corporation a list of the names of the persons owning shares of stock therein on the 10th day of January of each year, but the said corporation, by its officers, claiming that the shares of stock were not subject to taxation, have refused to furnish the names of the shareholders of said corporation when demanded as aforesaid.

The said officers accordingly, for the years 1889 and 1890, assessed the shares of stock in the following form, to wit:

For the year 1889:

"Bank of Commerce."

"Unknown owners of shares of stock, 6,000 shares."

"Valuation, $399,000."

14 And for the year 1890 thus:

"Unknown owners of 6,000 shares of stock of Bank of Commerce—valuation, $530,000."

Complainants are not informed who are the owners of said shares of stock. They are informed that it is claimed in their behalf by the officers of the bank, representing them, that the said shares of

stock are not taxable, and that, even if taxable, the assessment is void for indefiniteness and uncertainty. To the end that complainants may fairly and properly test the question as to whether, by the legal effect of the charter of the defendant corporation, both the shares of stock in the hands of the stockholders and the capital stock in the hands of the bank are exempt from taxation, J. A. Omberg, cashier of said bank and the custodian of its books now and
15 for many years heretofore, including the year 1887, is made a defendant hereto and is required in his answer to state under oath from the books of said defendant corporation the names of all persons or corporations owning shares of stock in said bank on the 10th day of January of each and every year since and including the year 1887. It is the purpose of the complainant, when the names of such shareholders shall be furnished in the manner aforesaid, to have said shares of stock assessed for each of the years aforesaid, so far as the same has not been legally done, and to bring the shareholders before the court in this proceeding by such amended and supplemental pleadings as may be necessary.

16 Complainants do not claim that both the shares of stock in the hands of the shareholders and the capital stock in the hands of the corporation were undertaken to be taxed by the legislature of the State, but they do claim that for and since the year 1887 the revenue laws of the State provided generally that the corporate property in the hands of a corporation should not be taxed, but that the shares of stock should be assessed and taxed at their market value. It is further provided by the act of 1887 and by the succeeding biennial sessions of the legislature of the State, as appears by the quotation hereinbefore made of section 14 of the act of 1887, that the capital stock in the hands of the corporation should be
17 taxed if by the charter provisions the shares of stock were not subject to taxation. Wherefore complainants desire that both the corporation and the shareholders may be brought before the court in one proceeding and that it may be determined whether the tax is validly laid on the shares of stock in the hands of stockholders or on the capital stocks in the hands of the corporation.

VII.

Complainants are informed and charge that since the adoption by the State of Tennessee of the constitution of 1870 the defendant banking company has increased its capital stock from $60,000.00 to $1,000,000.00. The bank, however, claims that its increase has been from $200,000.00. It is advised that the new stock, what-
18 ever may be the amount thereof and aside from all the questions, is taxable. It asks that the defendant J. A. Omberg may on his oath state in his answer whether or not the capital stock of the defendant banking company has been increased since the adoption by the State of the constitution of 1870, to wit, since the 4th day of May, 1870, and that he further on oath state the date or dates of such increase of stock if it has been increased more than once since the date last aforesaid, and that from the books of the

said company he may furnish a list of the persons, firms, or corporations ow-ing shares of stock in the defendant bank on the 10th day of January of each year since and including the year 1887 that have been issued since the adoption of the constitution
19 of the State on the 4th day of May, 1870. This discovery on oath is asked to the end that the shares of stock may be assessed and the owners thereof may be — *approviate*, amended, and supplemental pleadings be brought before the court in this cause for the purpose of enforcing and collecting the tax therefrom.

Complainants do not concede but, on the contrary, deny that the aforesaid assessment of the shares of stock for the years 1889 and 1890 *are* void and invalid, and when the names of the stockholders shall have been discovered and they shall have been brought before the court the amount of tax due from each of them under said assessment will be shown and judgment prayed for against them.

VIII.

By an act of the legislature passed March 19th, 1889, and
20 approved March 23rd, 1889, the same being chapter 104 of the acts of 1889, a privilege tax on banking within and for the city of Memphis (then the taxing district of Shelby county) was levied in terms following, to wit: "On the privilege of banking $1.00 on every $1,000 of paid-in capital stock, but in no case less than $50.00 annually."

Complainants charge that under the legislation of the State on that subject it is entitled to an additional recovery of 10 % upon the amount due at the time of the rendition of the decree herein as compensation to its attorney, F. T. Edmondson.

Complainants state that the amount of capital stock of the defendant banking company since and during the year 1889
21 has been $1,000,000, and that under the enactment aforesaid the said defendant banking company is indebted to the State for the use of the city of Memphis or to said city directly in the said sum of $1,000 annually, payable at the date of the passage of the act last aforesaid for the year 1889 and on the first day of January for the years 1890 and 1891.

Premises considered, plaintiffs pray that the parties named as such in the caption be made defendants hereto; that copy and subpœna issue, returnable to the next December rule day of the court; that the defendant corporation answer under its corporate seal; that the other defendant- answer under oath specific matters as asked in the body of the bill; that the court may determine
22 whether the corporation or the shareholders therein have any immunity from taxation under the charter of said company; that complainants may have a decree against the defendant corporation for such taxes, with proper interest, as may be legally due from it, and may have such further and general relief as in equity it ought to have under the facts stated.

F. T. EDMONDSON,
METCALF & WALKER,
Sol'rs for Compl'ts.

Cost Bond.

We, the City of Memphis and —— ——, as surety, acknowledge ourselves indebted to Bank of Commerce *et al.* in the sum of two hundred and fifty dollars, to be void if the said City of Mem-
23 phis, complainant in a bill which has this day been filed in the chancery court of Shelby county against the said Bank of Commerce *et al.*, shall pay all such costs as may be awarded against it by the court in its decrees and orders in said cause.

This 22nd day of October, A. D. 1891.

S. P. WALKER.
F. T. EDMONDSON.
C. W. METCALF.

Subpœna to answer and copy of bill issued October 22nd, 1891, returnable to December rules. Executed November 2nd, 1891, on Bank of Commerce by reading writ to J. A. Omberg, cashier, and leaving copy of bill with him.

Demurrer of Defendants.

Filed Nov. 28th, 1894.

24 STATE OF TENNESSEE, for the Use of THE CITY OF MEMPHIS, *et al.*
vs.
BANK OF COMMERCE *et al.*

The demurrer of the defendants.

Come the defendants and demur to the bill of complainant filed in the above-entitled cause and court, and as cause of demurrer assign that the 14th section of chapter 2 of the Session Acts of the Tennessee General Assemble of 1887 and the act passed on the 19th of March, 1889, being chapter 4 of the session acts of that year, are in conflict with section 10, article 1, of the Constitution of the United States, which ordains that no State shall pass any law impairing the obligation of contracts, and are void.

25 Wherefore these defendants demur and pray judgment of the court.

JULIUS A. TAYLOR,
W. H. CARROLL,
Sol'rs for Def't.
MORGAN & McFARLAND.

Order Overruling Demurrer.

Ent'd Jan'y 10, '95.

Chancery Court of Shelby County, Tennessee.

STATE OF TENNESSEE, for the Use of THE CITY OF MEMPHIS,
vs.
BANK OF COMMERCE *et al.*
R. D., 8092.

This cause came on to be heard on the demurrer of the defendants, and, the same having been argued by counsel and considered by the court, the said demurrer is overruled, with leave to the defendants to set up and rely in their answer on the points and defenses set up in said demurrer and to have the benefit of same at the hearing.

26 The said defendants are allowed ten days in which to answer the bill, the defendant J. A. Omberg being required to answer under oath, as prayed in the bill, within the period aforesaid.

It being admitted that this order was passed by the court on the 28th day of November, 1894, and by inadvertance not heretofore entered, it is ordered that the same be entered now as of that date.

Order to File Supplemental and Amended Bill.

Ent'd Jan'y 15th, 1895.

Chancery Court of Shelby County, Tennessee.

STATE OF TENNESSEE, for the Use of THE CITY OF MEMPHIS, *et al.*
vs.
BANK OF COMMERCE *et al.*
809–, R. D.

In this cause, for satisfactory reasons appearing to this
27 court, the complainants are permitted to file an amended and supplemental bill herein, and the same is accordingly this day filed.

It is ordered that no process issue on said amended and supplemental bill, but that the defendants to the original bill and the defendant J. A. Omberg be required to answer said original bill and the amended and supplemental bill on or before the next rule day of the court, the clerk being directed to issue and the sheriff to serve upon the defendants herein a certified copy of this order.

Amended and Supplemental Bill.

Filed Jan'y 8th, 1895.

Chancery Court of Shelby County, Tennessee.

28 STATE OF TENNESSEE, for the Use of THE CITY OF MEMPHIS, *et al.*
vs.
BANK OF COMMERCE *et al.*

Complainants, by leave of the court first had and obtained, bring this their amended and supplemental bill herein and respectfully state and show to the court that on the 22nd day of October, 1891, they filed their original bill herein for the purpose of enforcing payment of certain taxes alleged to be due from the defendant corporation or its shareholders for the years 1887 to 1891, inclusive; that the defendant- interposed a demurrer to said bill, which demurrer has by order of the court been overruled and the said defendants allowed ten days in which to answer the bill, the said
29 defendants being allowed by said order to set up in their answers the same points relied upon in their demurrer and to again rely upon the same at the hearing.

The defendants, for reasons hereinafter to be disclosed, have not yet answered the bill as required by the said order.

Complainants would further state and show that after the making of the order aforesaid overruling the demurrer of the defendants and requiring the said defendants to disclose the names of all the shareholders of the defendant corporation the said complainants and defendants entered into certain stipulations, copies of which are herewith filed, marked Exhibits "A" and "B" respectively, and prayed to be taken as part of this amended and supplemental bill,
30 but not to be copied.

By said stipulations the parties hereto have in substance agreed that the defendant corporation should and did assume the payment of any liability that might be established against the shareholders therein; that the defendant Omberg should be made a defendant hereto in his capacity as shareholder, and that whatever liability should be established against him should — taken as established against all the shareholders in the defendant corporation; that the liability of all, as thus established, would be and was assumed by the defendant corporation, and that the decree should go against the said corporation therefor; that the said defendant Omberg owned ten shares of stock, of the par value of $50 each,
31 in the defendant corporation on the 10th day of January of the year 1891, 106 shares in 1892 and 1893, and 186 shares in 1894; that the entire capital stock of the defendant corporation for each of the years aforesaid was one million dollars, divided into shares of fifty dollars each, and that the shares of stock of the de-

fendant Omberg should be taken and treated as legally and validly assessed for the years aforesaid as follows, to wit:

For the year 1891, at $48.50 on $100.
For the year 1892, at $28.00 on $100.
For the year 1893, at $35.00 on $100.
For the year 1894, at $35.00 on $100.

Complainants further state and show that the municipal tax rate for the year 1891 was $1.75 on the $100; for the year 1892, $1.75 on the $100; for the year 1893, $1.75 on the $100; for the year
32 1894, $1.70 on the $100, and that for the years aforesaid the shareholders in the defendant corporation (assuming the taxes to have been laid upon the shares of stock therein) are indebted to the complainant The City of Memphis, or The State of Tennessee, for the use of said city, in the sums following, to wit:

For the year 1891, in the sum of $8,488.00.
For the year 1892, in the sum of $4,900.00.
For the year 1893, in the sum of $6,125.00.
For the year 1894, in the sum of $5,950.00.

Complainants are advised that by the general tax laws of the State of Tennessee the taxes on corporate property or shares of stock in a corporation were, for the several years included in the original bill and in this amended and supplemental bill, laid as follows, to wit:

33 First. That on all banking corporations the taxes for all the years aforesaid were laid upon the shares of stock and not upon the capital stock of said corporations.

Second. That on insurance companies or the shareholders therein the taxes for the years 1887, 1888, and 1889 were, by chapter 2 of the acts of 1887, laid on the shares of stock therein; that for the years 1890 and 1891, by the act of 1889, chap. 96, sec. 13, that rule of taxation was changed, and that the taxes as to such companies were laid on the capital stock thereof; that for the year 1892, 1893, and 1894 the rule of taxation was again changed, and the taxes for those years were laid on the shares of stock in
34 such corporations by the act of the extra session of 1891, chap. 26, sec. 3.

The manner of laying these taxes is a matter of public and general law, and will be determined by the court, this averment in respect thereto being made by complainants, upon advice of counsel, without precluding complainants in respect of any question arising under said general laws.

Complainants reiterate all the averments of the original bill as if the same were here repeated verbatim.

Complainants, by way of further amendment, say that in the original bill herein it is averred that the charter of the defendant corporation provides that "said institution shall pay to the State an annual tax of one-half of one per cent. on each share of
35 capital stock which shall be in lieu of all other taxes;" but the full sentence of the charter from which the above quotation as made in the original bill is taken reads as follows:

"Said institution shall have a lien on the stock for debts due it

by the stockholders before and in preference to other creditors, except the State, for taxes, and shall pay to the State an annual tax of one-half of one per cent. on each share of capital stock, * * * which shall be in lieu of all other taxes."

Complainants, upon advice of counsel, aver that this clause of the charter, so far from showing an intent to exempt the shares of stock of the defendant corporation from taxation, shows by clear implication the contrary, inasmuch as the State, by the
36 clause in question, in effect reserves to itself a lien on the shares of stock superior to that of the institution itself for debts due it for the taxes that may become due to the State; and complainants are advised that the taxes here referred to mean such general taxes as might be thereafter *be* laid on the shares, and do not and cannot refer to the charter tax or bonus of one-half of one per cent. on each share of capital stock, for that the institution itself is required to pay said charter tax or bonus, and it therefore cannot be that that was the tax referred to in the fore part of the same sentence.

Complainants further aver that all the taxes sued for in
37 this original and in this amended and supplemental bill become due on the first day of February, and bear interest from the first day of May of the year from which the same was levied, and that complainants are entitled to recover ten per cent. upon the amount of any and all taxes and interest thereon due at the date of the hearing as compensation to complainants' solicitors herein.

Complainants further state and show that for the year 1892 the surplus and undivided profits of the defendant bank *was* duly assessed by the proper assessing officer at a valuation of $350,000, and the same was entered upon the assessment-roll in form following, to wit:, Bank of Commerce, Madison St., surplus and undivided profits—valuation, $350,000."

38 "At the same time and for the same year the shares of stock and in the defendant bank were assessed by the regular assessing officer and entered upon the assessment-rolls in form following, to wit, "Unknown owners of Bank of Commerce, value of capital stock of Bank of Commerce, excluding surplus, $310,000."

Exemption	30,000
Valuation	280,000

For the year 1893 the only assessment made by the regular assessing officer of the county and entered upon the assessment-rolls was in form following, to wit, "Bank of Commerce, surplus and undivided profits—valuation, $350,000." There was for that year no assessment by the regular assessor of the county, except as last above stated.

39 For the year 1894 the only assessment of the defendant Bank of Commerce or shares of stock therein, made by the regular assessor of the county and entered upon the assessment-rolls, was in form following, to wit, "Bank of Commerce, surplus and undivided profits—valuation, $350,00-."

The ad valorem city-tax rate for the year 1893 was $1.75 on the

$100 of valuation; for the year 1894, $1.70 on the $100 valuation; and complainants aver and submit that, aside from all other questions and claims made in the original, amended, and supplemental bills, the defendant bank is indebted to the city of Memphis on account of taxes on its surplus and undivided profits for the year 1893 in the sum of $6,125.00, and for the year 1894 in the sum of
40 $8,595.00. Complainants show that by the general laws of the State the city taxes for each year are based and collected on the State and county assessment for the preceding year. Hence the above assessment from the year 1892 of surplus and undivided profits becomes the city assessment for the year 1893; that for the year 1893 becomes the city assessment for the year 1894, and that for the year 1894 becomes the city assessment for the year 1895, the latter being not due until the first day of February of the current year.

Prayer.

Premises considered, complainants pray that the defendant James A. Omberg may be made a defendant hereto in his personal and individual capacity as a shareholder in the defendant
41 corporation; that he and the defendants named as such in the original bill may be required to answer said original bill and this amended or supplemental bill on or before the next rule day of the court; that complainants may have all the relief prayed for in the original bill, and may have such personal judgment or decree against the defendant corporation and the said defendant shareholders therein as they may be entitled to upon the facts stated in the said original and in this amended and supplemental bill, and that complainants may have such other relief, general and special, as they may and ought in equity to have upon the facts herein and therein stated.

METCALF & WALKER,
F. T. EDMONDSON,
H. T. WALSH,
W. B. HENDERSON,
Sol'rs for Compl'ts.

42 *Stipulation.*

Filed January 15th, 1895.

Chancery Court of Shelby County, Tennessee.

STATE OF TENNESSEE, for the Use of THE CITY OF MEMPHIS,
vs.
BANK OF COMMERCE *et al.*

In this cause the court having made an order overruling the demurrer filed by the defendants, allowing the defendants ten days in which to answer the bill and allowing the said defendants to set up and rely in their answer on all the points and defences set up in said demurrer and have the benefit of

same at the hearing, and the court having further ordered that the defendants J. A. Omberg, cashier, should, within the period aforesaid, answer under oath and make the discovery
43 of the names of the stockholders in the defendant corporation and of the amounts of stock respectively held by them on the 10th day of each January of the several years for which taxes are herein sued for, the parties hereto, in order to save the necessity of the disclosure as aforesaid of the names *of the names* of the stockholders in the defendant corporation and of their respective holdings, and in order to save the expense of suits against the said stockholders personally for the taxes referred to in the bill, have agreed and do hereby stipulate as follows, to wit:

I.

That the complainants herein, in consideration of the provisions of this stipulation, waive the necessity of a disclosure of the names of the stockholders in the defendant corporation, as prayed
44 for in the bill and ordered by the court.

That the defendant corporation, in order to avoid the necessity of discovery as aforesaid and a multiplicity of suits against its shareholders, assumes the payment of any liability for taxes that may be established and adjudged against the shareholders of and in the defendant corporation; that in order to test the question of liability of the shareholders for the taxes or any part thereof claimed by the bill the complainants herein may, by order of the court, amend and supplement their bill by making the defendant J. A. Omberg a defendant herein personally and as a shareholder in the defendant corporation; that the said defendant, J. A. Omberg, on the 10th day of January, 1891, 1892, 1893, and 1894, owned 10 shares in '91, 106 shares in '92 and '93, and 186 shares in '94
45 of $50 each in the defendant corporation; that for each of the years aforesaid the stock of the defendant corporation amounted in the aggregate to $1,000,000.00, divided into shares of fifty dollars each; that whatever liability may in this case be established, either under the new assessments or any future assessments, against the said defendant, J. A. Omberg, as a shareholder in said corporation shall be taken as establishing the like liability of all the shareholders therein, and that for such liability of all said stockholders as thus established a decree shall be entered against the defendant corporation, the said corporation hereby consenting that complainants may have a decree against it for any liability for taxes that may be herein established against its stockholders.

46 It is understood that the complainants will undertake in manner provided by law to assess or re-assess the shares of stock belonging to said J. A. Omberg for such years as the law permits; that such assessment or re-assessment shall apply to all the shares, and that by original, amended, and supplemental bill complainants will seek to establish the liability of said J. A. Omberg and the other shareholders of said corporation for the taxes of all years from 1888 to 1894, inclusive, this stipulation being applicable to

the taxes for each and all of the years aforesaid, and the decree to go against the defendant corporation for any liability that may be established against its shareholders, whether such liability be based upon the now or any future assessments.

47 IV.

It is further stipulated and understood that said defendant corporation and said defendant, J. A. Omberg, stockholder, shall have the right to make any defence in this case to the claim for taxes or liability for same, whether under the original, amended, and supplemental bill-, which could have been made if a list of all the stockholders had been furnished and the stockholders themselves made parties or sued separately, except that no defence for the stockholders will be made on the ground that a thousand dollars of personalty is exempt from taxation. Said defendant corporation is also entitled to make all defense which it can make to the claims made in the original, amended, and supplemental
48 bill-, the only object of this stipulation being to put upon the defendant corporation liability for any taxes that in due course of law the complainants may establish against the individual stockholders.

It is further stipulated that said J. A. Omberg, stockholder, shall have the right, if any decree is rendered against said stockholders and said corporations or either of them in this proceeding, to take the same by writ of error or appeal to any appellate court which under the law has the right to re-examine and correct said decree, the corporation also having the right, if it sees fit, either in its own name or in that of the stockholders, to prosecute an appeal or writ of error from any decree that may be recovered herein.

49 That this stipulation may be embodied in an order of court herein fixing the liability of the defendant corporation for all such taxes as may be herein established against or upon its shareholders for the years 1888 to 1894, inclusive, or either of them.

BANK OF COMMERCE.
BANK OF COMMERCE,
By S. H. DUNSCOMB, *Pt.*
J. A. OMBERG.
F. T. EDMONDSON,
For Complainant-.

STIPULATION—EXHIBIT "B" TO AMENDED AND SUPPLEMENTAL BILL.

Filed January 15th, 1895.

Chancery Court of Shelby County, Tennessee.

STATE OF TENNESSEE, for Use of THE CITY OF MEMPHIS, *et al.*
50 *vs.*
THE BANK OF COMMERCE *et al.*

In the above causes the complainants therein agree and stipulate with the defendants that in re-assessing the shares of stock of the defendant J. A. Omberg under the stipulation contemporaneously herewith entered — between the parties the said complainants will agree that the same may be re-assessed on the basis following, to wit:

For the year 1891, at $48.50 on each $100 of stock.
For the year 1892, at $28.00 on each $100 of stock.
For the year 1893, at $35.00 on each $100 of stock.
For the year 1894, at $35.00 on each $100 of stock.

51 This stipulation as to assessed valuation is made without prejudice to either party or any question whatever involved or that may arise in either of the cases, the sole purpose hereof being to agree upon the question of valuations to be adopted in the re-assessment of said shares of stock, leaving all other questions to be determined by the decree or decrees to be entered in the causes.

This Dec. 15th, 1894.

BANK OF COMMERCE,
By S. H. DUNSCOMB, *P't.*
METCALF & WALKER,
For Compl'ts.

In the Chancery Court of Shelby County.

STATE OF TENNESSEE, for Use of CITY OF MEMPHIS,
vs.
BANK OF COMMERCE *et al.*

52 Since the making of the above stipulation the defendants hereto, recognizing the right on the part of the complainants, through the officials and in the manner designated and provided by law, to assess or re-assess the shares of stock of the said defendant, J. A. Omberg, for the years 1891, 1892, 1893, and 1894, have agreed to waive the necessity therefor, and the parties hereto have agreed and do hereby agree that the shares of stock belonging to the defendant J. A. Omberg, as set forth in the foregoing stipulation, shall be taken and treated as validly and legally assessed for the years 1891, 1892, 1893, and 1894 at the amounts and valuations shown in the foregoing stipulation and in the stipulation executed contemporaneously therewith; this case to be disposed of —

all respects as if the said stock had been actually assessed
53 or re-assessed at the figures shown in said stipulation, but this agreement for a waiver of assessment to be applied only for the purposes of disposing of this cause and for no other purpose whatever.

This Dec. 17, 1894.

BANK OF COMMERCE,
By S. H. DUNSCOMB, *P't.*
J. A. OMBERG.
METCALF & WALKER,
For Compl'ts.

Demurrer of Jas. A. Omberg.

Filed January 24th, 1895.

STATE OF TENNESSEE, for Use of THE CITY OF MEMPHIS,
vs.
BANK OF COMMERCE and JAMES A. OMBERG.

The demurrer of James A. Omberg to so much and such parts of the bill of complaint as seeks to recover taxes upon shares of
54 stock in his own behalf as a shareholder and under the stipulation as representing the aggregate shares of stock of the Bank of Commerce, and for cause of demurrer he says—

That the revenue laws of the State of Tennessee, under which the State of Tennessee and the county of Shelby claim the right to assess for taxation the shares of stock that he owns and the shares of stock that are owned by his coshareholders of the Bank of Commerce and require of him the discovery of the persons who owned the same, are inoperative and void because repugnant to the provision of the Constitution of the United States contained in section 10 of article 1, that ordains that no State shall pass any law impairing the obligations of a contract. Wherefore he prays
55 judgment of the court.

JULIUS A. TAYLOR.
WM. H. CARROLL.
MORGAN & McFARLAND.

Demurrer of Bank of Commerce.

Filed January 24th, 1895.

STATE OF TENNESSEE, for Use of THE CITY OF MEMPHIS,
vs.
BANK OF COMMERCE and JAMES A. OMBERG.

I.

Comes the defendant The Bank of Commerce and demurs to so much and such parts of the original and amended and supplemental bills as seek to recover taxes from it on its capital stock for 1887,

and for cause of demurrer it assigns that there was no as-
56 sessment thereof, and the re-assessment made by the county trustee was void and not efficacious. Wherefore it prays judgment of the court

II.

And comes the Bank of Commerce and demurs to so much and such parts of the original, amended, and supplemental bills as seek to recover taxes upon its capital stock and a privilege tax or upon its surplus and undivided profits, and for cause of demurrer it says that the general revenue laws of the State of Tennessee that are set forth in the bill, wherein and whereby it is claimed taxes for the State, county, and municipal purposes shall be assessed and levied at a rate uniform with the rate levied upon other taxable property, upon the capital stock of this corporation, the value of which
57 capital stock shall be fixed and returned by the assessor as being the equal to the aggregate market value of all the shares of stock in said corporation, including the net surplus, and chapter 104 of session acts of 1889 and the revenue laws under which it is claimed the right exist- to collect a tax upon capital stock or — tax or upon its surplus and undivided profits, impair the obligations of the contract of exemption from taxation contained in its chapter and violates section 10 of article 1 of the Constitution of the United States, which ordains that no State shall pass any law impairing the obligations of a contract.

Wherefore the Bank of Commerce says it is not liable for nor bound to pay the taxes demanded and sought by this pro-
58 ceeding to be collected, it having paid the bonus tax to the State in lieu of all other taxes.

III.

And comes the Bank of Commerce and demurs to the 6th paragraph of the original bill, and for ground of demurrer it says that the exemption from taxation other than the commutation tax of one-half of one per cent. operates to exempt both shares of stock and the capital stock and *its* franchises of this demurrant from other taxation, and the revenue laws of the State of Tennessee under which it is sought to assess shares of stock for taxation and that require the proper officers of this demurrant to furnish the names of its shareholders when demanded are void, being repugnant to section 10 of article 1 of the Constitution of the United States,
59 that provides that no State shall pass any law impairing the obligations of a contract. Wherefore it prays the judgment of this court.

IV.

And for further cause of demurrer the Bank of Commerce says that the several revenue acts mentioned in the bill under which it is sought to levy and collect the tax upon the capital of the defendant bank are null and void, because they contravene section 28 of article 2 of the constitution of the State of Tennessee, which or-

dains that all taxes shall be equal and uniform throughout the State, and that no one species of property for which a tax may be collected shall be taxed higher than any other species of property of the same value.

JULIUS A. TAYLOR.
W. H. CARROLL.

60 *Agreement of Counsel.*

Filed Jan'y 26th, 1895.

Chancery Court of Shelby County, Tennessee.

STATE OF TENNESSEE, for the Use of THE CITY OF MEMPHIS,
vs.
BANK OF COMMERCE *et al.*

For the purpose of a final disposition of this cause the parties agree and stipulate as follows, to wit:

I.

That the original assessments of the capital stock or the shares of stock and of the surplus and undivided profits of the defendant Bank of Commerce for the several years for which the taxes are sued for in the bill were in the form following, to wit:

For the year 1888, "Bank of Commerce, N. S., Madison street, 6,000 shares, valuation	$399,000"
61 For the year 1889, "unknown owners of 6,000 shares of stock Bank of Commerce, capital $600,000	$540,000"
Less assessed on real estate	10,000
"Valuation	$530,000"
For the year 1890, Bank of Commerce, N. S., Madison —:	
"Value of capital stock	$481,500
"Exemption	15,000
"Valuation	$466,000"
For the year 1891, "unknown owners, market value of 10,000 shares of capital stock, Bank of Commerce, valuation	$500,000"
For the year 1892, "Bank of Commerce," Madison St., surplus and undivided profits, valuation	$350,000"
Same year, "unknown owners, market value of	
62 capital stock of Bank of Commerce, excluding surplus	$310,000
Valuation, exemption	30,000
Valuation	$280,000"

For the year 1893, "Bank of Commerce, surplus and undivided profits, valuation ..... $350,000"

For the year 1894, "Bank of Commerce, surplus and undivided profits, valuation ..... $350,000"

That on the 2nd day of October, 1891, the county trustee, under the provisions of law in that regard and after notice to the defendant corporation, assessed the capital stock of said corporation in the manner and at the valuations shown by the paper hereto annexed, marked Ex. "B," and to be taken as part of this stipulation.

63 That on the 26th day of December, 1893, the said county trustee assessed the shares of stock of and in said defendant corporation for the years, in the manner, and at the valuations shown in the paper hereto attached, marked Exhibit "C," and to be taken as part of this *consideration*.

The recitals made in said exhibits are admitted to be true.

Complainants deny the validity or sufficiency of each and every of the assessments aforesaid, this stipulation in this regard being made solely for the purpose of waiving the necessity of proving the assessments from the assessment-rolls and all questions arising thereunder, either as to the validity and sufficiency of the assessments or the liability of the defendants or either of them being left to the determination of the court.

64 II.

That at the time of the adoption of the constitution of the State of Tennessee, to wit, May 5th, 1870, the capital stock of the defendant bank was $200,000; that on the 17th day of March, 1887, and on sundry days before June 1st, 1887, the same was regularly increased to $600,000; that on the 17th day of March, 1890, and on sundry days before June 1st, 1890, the same was again regularly increased to $1,000,000.

It is admitted that the shares of stock belonging to J. A. Omberg, as shown in the former stipulations, are new shares—that is, shares issued since the adoption of the constitution of 1870—and said stipulation is now modified to the extent of providing that if the court should hold the shares of stock issued since the constitu-

65 tion of 1870 taxable and taxed and those issued before said constitution not taxable such holding should be taken as establishing the liability of all said new stock, which liability is assumed by and decree therefor to go against the corporation.

If all the shares of stock should be held taxable and taxed, then, as already stipulated, the decree to the extent that liability should be established against same shall go against the defendant corporation.

That the charter of the defendant bank is contained in the paper hereto attached, marked Exhibit "A," and to be taken as part of this stipulation, the same to be treated as if embodied in the bills and being admitted to be the charter of the defendant corporation.

66 Complainants admit that for every year since and including the year 1873 the defendant Bank of Commerce has an-

nually paid to the State one-half of one per cent. on each share of its capital stock.

IV.

That defendants waive the right to answer the bill or the amended bill herein, and agree to stand on their demurrer now on file to the original and amended bills, said demurrer for the purpose of a final hearing, admitting the truth of the averments of the said bills and of the stipulations on file as if all the facts contained in said stipulations were therein set forth, and the parties agreeing that upon the facts stated in the bills and stipulations and admitted
67 to be true the case may be finally disposed of.

METCALF & WALKER,
For Complainants.
JULIUS A. TAYLOR,
MORGAN & McFARLAND,
T. B. TURLEY,
W. H. CARROLL, *For Defendants.*

EXHIBIT "A" TO STIPULATION.

Chapter 128 of the acts of 1855–'56.

An act to incorporate the Gayoso Savings Institution and the Chattanooga Savings Institute.

SECTION 1. Be it enacted by the General Assembly of the State of Tennessee, That Jesse Maxwell, A. D. Witherspoon, A. J. White, William E. Milton and Gabriel Smither, and their associates and successors, be, and they are hereby created a body politic and corporate, by the name and style of the Gayoso Savings Institu-
68 tion, and by that name shall have succession, sue and be sued, plead and be impleaded and generally to do every act and thing necessary to carry out the provisions of the act, and promote the object and design of the corporation.

SECTION 2. Be it further enacted, That the capital stock of said company shall be divided into shares of fifty dollars each, and when two hundred shares shall have been subscribed and the sum of one dollar per share paid thereon, the stockholders may meet and elect five directors, who shall be elected and enter upon their duties; and said directors shall elect one of their number to be president during their term of office.

SEC. 3. Be it further enacted, That said president and direct-
69 ors shall and may adopt and use a common seal, and alter the same at pleasure; make and adopt proper and necessary by-laws for their government, and appoint all officers and agents, fix their compensation, and take bond and security for the faithful discharge of their duties; they may prescribe the manner of paying the stock, and of the transfer thereof. Said institution shall have a lien on the stock for debts due it by the stockholders, before

and in preference to other creditors, except the State for taxes, and shall pay to the State an annual tax of one-half of one per cent. on each share of capital stock, which shall be in lieu of all other taxes.

SEC. 4. Be it further enacted, That said institution may discount notes, may buy and sell stocks, deal in exchange and gold and
70 silver bullion; may purchase and hold a lot of ground for the use of the institution, as a place of business, and at pleasure, sell or exchange the same, and may hold such real or personal property and estate as may be conveyed to it, to secure debts due the institution, and may sell and convey the same. It may receive on deposit, any and all sums not less than one dollar per week offered as stock deposits; and infants and *femes covert* may deposit therein and control the deposits so made, which shall be for their own separate use free from other contracts or control whatever; and when such deposits shall amount to fifty dollars, it may, at the option of the depositor, become stock in the institution. It may
71 receive other or general deposits, and allow such interest thereon as may be agreed upon, not exceeding that allowed by law; and twice per year, declare and pay to stockholders a dividend of profits. But said institution is hereby expressly prohibited from issuing notes, certificates, or other paper, for the purpose of being used, or which shall have a tendency to pass and be used as a circulating medium.

SEC. 5. Be it further enacted, That the president and directors shall annually appoint the time and place of holding the election of their successors, and two or more of their members shall attend and conduct said election, each share being entitled to one vote.

SEC. 6. Be it further enacted, That Benjamin Chandler,
72 Samuel McAmy, James Whitesides, John L. M. French, Edwin Marsh, Jas. E. Warner their associates and successors be, and they are hereby created a body politic and corporate, by the name and style of the Chattanooga Savings Institute, and by that name shall have succession, sue and be sued, plead and be impleaded; and they are hereby invested with all the powers, privileges, rights and immunities, and subject to the same liabilities and restrictions that are given and imposed in the foregoing sections upon the Gayoso Savings Institution. The corporation chartered by this section shall be located in the city of Chattanooga.

SECTION 7. Be it further enacted, That this act shall be in force from and after the date of its passage, and shall remain in force fifty years.

73 (Signed) NEILL S. BROWN,
Speaker of the House of Representatives.
EDWARD S. CHEATHAM,
Speaker of the Senate.

Passed February 29th, 1856.

EXHIBIT "B" TO STIPULATION.

1st Supplemental Assessment.

Shelby county trustee's office.

MEMPHIS, TENN., *Oct. 2nd*, 1891.

Having been notified, in writing, on the 29th day of Sept., 1891, by C. Weatherfords, the attorney for the State and county taxes, appointed by the comptroller of the State, that it appeared to the said C. Weatherford from information and notice to him by W. R. Harrell, chairman of the county court, that the capital stock of the Bank of Commerce of Memphis, Tenn., a corporation
74 doing business, had not been assessed for taxes or had been inadequately assessed for the years 1887, 1888, 1889, and 1890, and the said C. Weatherford having notified me at the time to cite said company to appear before me for the purpose of being assessed for taxes, as provided by law, for said years, I did, on the 1st day of October, 1891, cite said company to appear in my office at 10 a. m. on the 2nd day of October, 1891, for the purpose of assessing said capital stock for taxation for the years aforesaid.

And a copy of said citation having been delivered to J. A. Omberg, cashier, on the 1st day of October, 1891, I did, on the 2nd day of October, 1891, at the hour of 10 a. m., and at my
75 office, proceed to assess the capital stock of the Bank of Commerce to said company for the years aforesaid and at the valuations following, to wit:

For the year 1887	$342,000 00
For the year 1888	342,000 00
For the year 1889	399,000 00
For the year 1890	530,000 00

The said bank appeared at the time and place designated for making said assessment, by its attorney, and then and there protested, in writing, against any assessment of its capital stock being made by me upon the ground that the said shares of stock were exempt from taxation by the charter of the company.

J. J. WILLIAMS,
County Trustee.

76 EXHIBIT "C" TO STIPULATION.

2nd Supplemental Assessment.

Shelby county trustee's office.

MEMPHIS, TENN., *Dec. 26th*, 1893.

Having been notified, in writing, on the 22nd day of December, by C. Weatherford and A. J. Harris, the attorneys and agents for the collection of State and county taxes, appointed by the comp-

troller of the State, that it appeared to the said C. Weatherford and A. J. Harris from information and notice to them by W. R. Harrell, chairman of the county court, that the shares of stock in the Bank of Commerce of Memphis, Tenn., a corporation doing business in the city of Memphis, had not been assessed for taxes or had been irregularly or defectively assessed for the years 1890, 1891, 1892, and 1893, and the said C. Weatherford and A. J. Harris
77 having notified me at the same time to cite said company to appear before me in order that the said shares of stock be assessed for taxes, as provided by law, for said years, I did, on the 23rd day of December, 1893, cite said company to appear at my office, at 10 o'clock a. m. on the 26th day of December, 1893, for the purpose of assessing said shares of stock for taxation for the years aforesaid, and a copy of said citation having been delivered to J. A. Omberg, cashier, on the 23rd day of December, 1893, I did, on the 23rd day of December, 1893, at the hour of 10 a. m., and at my office, proceed to assess the shares of stock in the Bank of Commerce for the years aforesaid and at the valuations following, to wit:

78 The officers of said Bank of Commerce have failed and refused to disclose the names of its stockholders and being wholly unable otherwise to ascertain the same, we assess the shares of stock therein to the unknown owners thereof at 88⅛ cents on the dollar of the nominal value thereof for the year 1890; at 77⅞ cents on the dollar of the nominal value thereof for the year 1891; at 50 cents on the dollar of the nominal value thereof for the year 1892, and at 63 cents on the dollar of the nominal value thereof for the year 1893.

The capital stock of said corporation is and for each of the aforesaid years was $600,000.00 for 1890 and 1891 and $1,000,000.00 for 1892 and 1893, divided into shares of $50 each. Each share
79 of said stock is therefore assessed for the several years aforesaid to the unknown owners thereof at the amount following, viz:

For the year 1890 at	$44 16
For the year 1891 at	38 86
For the year 1892 at	25 00
For the year 1893 at	31 50

J. J. WILLIAMS,
County Trustee.

Final Decree. Ent'd March 11th, 1895.

STATE OF TENNESSEE, for the Use of THE CITY OF MEMPHIS, and THE CITY OF MEMPHIS
vs.
BANK OF COMMERCE.

This cause came on to be heard before the Hon. Jacob S. Galloway, judge of the probate court, sitting by interchange
80 with the Hon. Sterling Pierson, chancellor of the chancery court of Shelby county, Tennessee, part 2, upon the demurrer

of the Bank of Commerce and the demurrer of James A. Omberg to the original, amended, and supplemental bills and upon the several stipulations and agreements of counsel filed respectively on the 15th day of January, 1895, and the 26th of January, 1895, and, after argument by counsel and full consideration had, the court is of the opinion that the grounds of demurrer assigned are well taken, and the same are accordingly sustained.

Wherefore it is ordered that the original, amended, and supplemental bills of complaint be, and they are hereby, dismissed, and the costs of this cause will be paid by the complainant and
81 the sureties, S. P. Walker, F. T. Edmondson, and C. W. Metcalf, upon its cost bond, for all which let execution issue.

From all which judgment and decree complainant prays an appeal to the next term of the supreme court of Tennessee, to be held at Jackson on the first Monday in April next, which is granted upon condition that the complainant execute an appeal bond in the penalty of $250.00, with good and sufficient security, conditioned according to law.

J. S. GALLOWAY, *Judge.*

Opinion.

STATE OF TENNESSEE *et al.*
vs.
THE BANK OF COMMERCE *et al.*

82 This clause in the charter of the Bank of Commerce, "and shall pay to the State an annual tax of one-half of one per cent. on each share of capital stock, which shall be in lieu of all other taxes," has been passed upon by our supreme court, which has held that under this provision *that* no ad valorum tax can be lawfully laid on the capital stock, and that shares of stock are likewise exempt from other taxation than that prescribed in the charter.

We are called upon to construe this clause in the charter of the Bank of Commerce, to wit: "The said institution shall have a lien on the stock for debts due it *it* by the stockholders before and in preference to other creditors except the State for taxes."
83 Does this mean that the State can impose a tax upon the shares of stock in addition to that imposed upon the capital stock? We are clearly of the opinion that it does not, and that the State can impose no further tax than one-half of one per cent. upon the capital stock of the bank.

If a bank having this kind of a charter sees fit to increase its capital stock, as the bank has done, since the constitution of 1870, can any higher tax than one-half of one per cent. be levied upon such increase of stock? We think not. Neither do we think that the surplus funds of the bank can be taxed at a higher rate than one-half of one per cent., and this shall be in lieu of all other taxes.

The several demurrers to the bill of complaint are there-
84 fore sustained and the bill dismissed.

Appeal Bond.

Filed March 18, '95.

We, City of Memphis, appellants, and sureties W. L. Clapp and S. P. Walker, acknowledge ourselves indebted to Bank of Commerce *et al.*, appellees, in the sum of two hundred and fifty dollars; to be void if the said City of Memphis, above named as appellant, who has prayed for and obtained an appeal from the decree of the chancery court of Shelby county, in a cause in which State of Tennessee, use of City of Memphis, — complainant and Bank of Commerce *et als.* defendants, to the next term of the supreme court of Tennessee for the district of West Tennessee, to be held at
85 Jackson, Madison county, on the first Monday in April next, shall pay all such costs as shall be awarded against it by said supreme court.

This 18th day of March, 1895.

CITY OF MEMPHIS, [SEAL.]
By W. L. CLAPP, *Mayor.* [SEAL.]
W. L. CLAPP, *Surety.* [SEAL.]
S. P. WALKER, *Surety.*

STATE OF TENNESSEE, *Shelby County,* } *ss:*

I, R. H. Beard, clerk and master of the chancery court of Shelby county, do hereby certify that the foregoing 43 pages contain a full, true, and perfect transcript of all the proceedings had in a certain cause lately pending herein, wherein State of Tennessee, use, &c., — complainant and Bank of Commerce *et al.* defendants, as
86 the same appears of record and on file in my office.

In witness whereof I hereunto set my hand and affix the seal of said court, at office, in Memphis, this 15th day of March, A. D. 1895.

[Seal Chancery Court of Shelby County, Tenn.]

R. H. BEARD,
Clerk and Master,
By T. B. CALDWELL,
D. C. & M.

87 Filed June 21, 1895.

STATE OF TENNESSEE, for Use, etc., and CITY OF MEMPHIS
vs.
BANK OF COMMERCE } No. 54.

and

STATE OF TENNESSEE, for Use, etc., and SHELBY COUNTY
vs.
BANK OF COMMERCE. } No. 55.

These cases involve substantially the same issues and may be decided in one opinion.

The first is a bill in equity, in the name of the State for the use of the city of Memphis, to recover from the Bank of Commerce ad valorem taxes on its capital stock for the years 1887 to 1894, inclusive; taxes for the years 1892, 1893, and 1894 upon the surplus and undivided profits of the bank during these years; a privilege tax of $1,000 per year from 1889 to 1894, inclusive, and from the stockholders of the corporation taxes on the shares of stock held by them respectively during the years 1887 to 1894, inclusive.

The second is a similar bill upon the part of the State of Tennessee and county of Shelby covering a part of the same period. The taxes sued for, exclusive of the privilege tax, aggregate of the sum of about $116,000.

88 By stipulation of the parties one shareholder is made a defendant to represent all the shareholders, and in the event of a decree against him the same to be as established against all the stockholders and a decree to be entered against the corporation.

A demurrer was interposed by the defendants setting up a claim of exemption from all taxation under the terms of the charter either upon the shares of stock or the capital stock, defendant bank having paid the charter tax.

By agreement of the parties the cases were regularly brought to hearing; whereupon the chancellor sustained the demurrer and dismissed the bills, from which decree complainants in both cases have appealed.

Defendants claim complete immunity from these taxes by reason of a provision in its charter in words as follows:

"The said institution shall have a lien on the stock for debts due it by the stockholders before and in preference to other creditors, except the State for taxes, and shall pay to the State an annual tax of one-half of one per cent. on each share of capital stock, which shall be in lieu of all other taxes."

The bills claim:

First. That the charter tax of one-half of one per cent. was laid on the capital stock, leaving the shares of stock subject to general taxation in the hands of the shareholders.

Second. That if this be not the right construction, then the charter tax was laid on the shares of stock, leaving the capital stock and franchise taxable.

89 The contention of the defendants is that the charter tax is on the shares of stock, and that both shares of stock—capital stock and franchise—are absolutely exempt from all taxation, except the charter tax of one half of one per cent.

Complainants sue both the corporation and the shareholders and seek alternative relief, dependant upon the construction which may be given this provision of the charter. The bills are so framed and the cases so presented that relief may be given, either against the corporation or the shareholder, in so far as the taxes have been imposed and valid assessments made.

By an act of the legislature of this State passed February 9th, 1856, the Gayoso Savings Institution and the Chattanooga Savings Institution were created bodies politic and corporate, and by the

third clause of that act each was given the powers, rights, privileges, and immunities expressed in the clause above quoted. By subsequent legislation the name of the Chattanooga Savings Institution was changed to "the Bank of Commerce" and its situs moved to Memphis.

It has been adjudicated and settled by this court that the Bank of Commerce has and enjoys all the rights, privileges, powers, and immunities of the Chattanooga Savings Institution; that it is in truth that institution under a new name.

State *vs.* Butler, 2 Pickle, 614.

The charter was granted under the constitution of 1834,
90 when the legislature had the power to grant such immunity from taxation, and is a contract by which the State is bound, the obligation of which may not be impaired by subsequent legislation or constitutional provision.

Constitution of the U. S., art. 1, sec. 10.
Dartmouth College *vs.* Woodward, 4 Wheat., 519.
Farrington *vs.* Tennessee, 95 U. S., 679.
Memphis *vs.* Farrington, 8 Bax., 541.
State *vs.* Butler, 13 Lea, 808.
State *vs.* Butler, 2 Pickle, 614.
Memphis *vs.* Bank & Ins. Co., 7 Pickle, 549.
Union Bank *vs.* State, 9 Yerg., 490.
Constitution of Tennessee, art. 1, sec. 20.

"Shares of stock and capital stock are separate and distinct property interests and form separate and distinct subjects of taxation." The taxation of both is not double taxation.

Memphis *vs.* Bank & Ins. Co., 7 Pickle, 549.

To the same effect are—

New Orleans *vs.* Houston, 119 U. S., 277.
Farrington *vs.* Tennessee, 95 U. S., 687.
Union Bank *vs.* State, 9 Yerg., 490.
Street R. R. *vs.* Morrow, 3 Pickle, 406.
Memphis *vs.* Ensley, 6 Bax., 406.
Tennessee *vs.* Whitworth, 117 U. S., 135.

91 The rule that taxation shall be uniform and that all property shall bear its portion of the burden imposed by law for the public good being so manifestly just, it follows that "he who claims an exemption from his share of the common burden must justify his claim by the clearest grant of organic or statute law."

Memphis *vs.* Bank & Ins. Co., 7 Pickle, 550.

The right of taxation will not be held to have been surrendered (as expressed by Chief Justice Taney) "unless the intention to surrender is manifest by words too plain to be mistaken."

Ohio Ins. Co. *vs.* Debolt, 16 How., 435.

"If a doubt arise as to the intent of the legislature, that doubt must be solved in favor of the State."

The Delaware R. R. tax, 18 Wall., 226.

Memphis *vs.* Bank & Ins. Co., 7 Pickle, 550.

"The language in which the surrender is made must be clear and unmistakable."

Erie Railway Co. *vs.* Penn., 21 Wall., 498, 499.

"When exemption is claimed it must be shown indubitably to exist."

Farrington *vs.* Tennessee, 95 U. S., 686.

"The presumption is always against any surrender of the taxing power."

Tennessee *vs.* Whitworth, 117 U. S., 136.

92 The same rule is announced in—

State *vs.* Butler, 13 Lea, 406.

Memphis Gas Light Co. *vs.* Tax. Dist., 109 U. S., 398.

New Orleans R. R. Co. *vs.* New Orleans, 143 U. S., 195.

In Wilson *vs.* Gaines, 9 Baxter, 551, Judge Turney, for this court says: "Exemptions from taxation are contrary to public polisy and can only be granted in clear and unmistakable terms. They are not creatures of intendment or presumption. If the language in which they are claimed to be granted leaves it doubtful, the benefit of the doubt must be given to the State, the life of which is taxes."

It is equally certain that in construing such grant it is our duty to see that the contract between the State and the corporation is sustained and enforced; that nothing which has been granted shall be taken away. The idea is well expressed by Mr. Justice Swayne in Farrington *vs.* Tennessee, 95 U. S., 682: "A compast lies at the foundation of all national life." * * * "Spotless faith in their fulfillment honors alike communities and individuals."

The defendants mainly rely upon the case of Farrington *vs.* Tennessee, 95 U. S., 679, as conclusive of the questions here raised, and base their contentions on the fact that this charter (with others) was construed in that case.

The opinion was pronounced in the case of the Union & Planters' bank, and the construction was primarily of the exemption clause contained in the charter of that corporation. Several cases were heard with that of the Union & Planters' bank and
93 were disposed of by the same opinion, as appears by a footnote at page 690.

The charter of the Bank of Commerce was there construed under the style of Wicks *vs.* Tennessee, and the language of Mr. Justice Swayne in disposing of the cases heard with the principal case as given by the reported is as follows:

"These cases are all disposed of by the opinion in Farrington *vs.* Tennessee, *supra*, 679. The questions are substantially the same as in that case and the results must be the same."

Defendants construe that case as holding that the charter tax was

laid on the shares of stock in the hands of the shareholders, and that the tax is in lieu of all other taxes, either of shares of stock, of capital stock, franchise, etc.

Complainants concede the first but dispute the second proposition and contend that the adjudication in that case goes no further than to settle that the charter tax is on the shares of stock, and that the shares are exempt from all further or other taxation.

They further contend that when the case was under consideration by the Supreme Court of the United States in the Farrington case the full text of the exemption clause was not set forth in the agreed statement of facts upon which the case was heard; that certain material parts of said clause were omitted from the agreed stipulation, and that the present case is a new one, which required another and a different construction of the defendants' charter from that given in the Farrington case, 95 U. S., 679; that the correct con-
94 struction of the charter in full is that the charter tax is laid on the capital stock, leaving the shares of stock in hands of stockholders subject to general taxation.

These questions have been argued orally and upon briefs by counsel for the respective parties with consum-ate ability, and we have given them — careful consideration which the large interests and important questions involved justify and demand. Keeping in view the elementary cannons of constructions before announced, we dispose of the issues raised upon these records. The exemption clause of the charter of the Bank of Commerce, correctly copied, is:

"The said institution shall have a lien on the stock for debts due it by the stockholders before and in preference to other creditors, except the State for taxes, and shall pay to the State an annual tax of one-half of one per cent. on each share of capital stock, which shall be in lieu of all other taxes."

The language of the charter, construed by the Supreme Court in the Farrington case, as set out at page 681, is:

"The said company shall pay to the State an annual tax of one-half of one per cent. on each share of the capital stock subscribed, which shall be in lieu of all other taxes."

Bringing the two clauses thus into juxtaposition, it will be seen that the first thirty-one words of the correct copy are omitted from the latter, and that two words, "the" and "subscribed," appear in the latter copy, which are not in the charter of the Bank of Commerce.

The same error or omission in quoting the charter of this
95 bank occurs in substance in Memphis *vs.* Farrington, 8 Baxter, 541 (being the same case reported in 95 U. S., 679); Bank of Commerce *vs.* McGowan, 6 Lea, 703, and State *vs.* Butler, 15 Lea, 105; S. C., 2 Pickle, 617.

That we may look to the original records to ascertain accurately what was before the court and what was intended to be decided, we think, upon authority, is clear.

Bank of Ohio *vs.* Knoop, 16 How., 369, 401.
Keokuk R. R. *vs.* Mo., 152 U. S., 301.
W. & W. R. R. *vs.* Alsbrook, 146 U. S., 302.

These suits being for other years than those sued for in the Farrington case, that decision is not (as an adjudication) conclusive of the present case.

Crowmell *vs.* The County of Sac, 94 U. S., 351.
Nesbitt *vs.* Riverside Ind. Dist., 144 U. S., 610.
Keokuk R. R. *vs.* Mo., 152 U. S., 301.
W. & W. R. R. *vs.* Alsbrook, 146 U. S., 279.

It having been held by the Supreme Court of the United States in the Farrin-ton case that the charter *was* was laid on the shares of stock, and that the same were not subject to other or further taxation, the adjudication would ordinarily be treated as controlling upon this court, provided the question is the same, or in substance the same, as was there considered and decided.

If the omitted words be not material and the construction
96 of the full text is the same as heretofore given to that part of the clause under consideration in Farrington *vs.* Tennessee, than that decision might control, but if the omitted words are material and may lead to a different construction, then the question is *res integra* in fact as it is in law, and open to consideration by this court. This is the con-rol-ing and vital question in this case.

It will be observed that this charter differs from that of the Union & Planters' bank in that the annual tax of one-half of one per cent. is to be paid to the State on each share of capital, not on each share of capital subscribed, as was the case in the Union & Planters' bank (the Farrington case). Stress was laid by the court in the Farrington case upon the word "subscribed;" that the court *using* the fact that the tax was laid upon the stock subscribed, whether paid in or not, as one of the arguments to show that the charter tax was on the shares, and for the reason that it would never be supposed that the State intended to tax as property capital stock not paid in.

The more striking difference lies in the fact that by this charter the institution is given "a lien on the stock for debts due it by the stockholders before and in preference to other creditors except the State for taxes." This language naturally implied that the taxes here referred to are upon the shares, and that the lien reserved by the State for taxes does not refer to the annual charter tax of one-half of one per cent., and for the reason that the charter tax
97 was to be paid by the corporation, but to such other or general taxes as might be levied by the State.

If the charter tax was not the subject of reference in the reservation of a lien to the State, it would appear that the State clearly reserved the power generally to tax the shares by reserving a lien for such taxes.

Is it natural or reasonable to assume that the State reserved a lien on the shares (the property of the shareholders) to pay a tax that the corporation was required to discharge—required one person to pay a tax, but reserved a right on the property of another to secure its payment?

The contention of the defendants that the charter tax *in* on the

shares and that the lien is reserved for that tax puts the State in the attitude of having voluntarily postponed itself to every other creditor of the corporation, for all creditors must be paid before the shareholder gets anything.

Why should the State accept such inadequate security?

In 1836 the case of The Union Bank *vs.* Tennessee was decided, and the principle established therein has been the law of the State for twenty years, when this charter was granted.

The exemption clause of that charter is—

"That in consideration of the privileges granted by the charter, the bank agrees to pay annually the one-half of one per cent. on the amount of the capital stock paid in by the stockholders other than the State."

9 Yerg., 492.

In that case it was established as the law of Tennessee that under such charter the capital stock was exempt from taxation other than the charter tax, but the shares were taxable, and we may well assume that the legislature so understood the law
98 when defendants' charter in that case was granted; that they understood that the charter tax was upon the capital stock, and that the shares in hands of the holders were taxable.

Applying the rule that all doubts are to be solved in favor of the State, that when an exemption is claimed it must be shown indubitably to exist, and that the presumption is always against any surrender of the taxing power, we think the correct construction of the charter as now presented is that the charter tax was laid on the capital stock and that the shares of stock are subject to general taxation.

Prior to the decision of the Farrington case, 95 U. S., 679, this court had always so understood and construed these charters.

Union Bank *vs.* Tennessee, 9 Yerg., 489.

Memphis *vs.* Farrington, 8 Bax., 539.

Subsequent to that decision our court has followed it in a line of cases, among which are The Bank of Commerce *vs.* McGowan, 6 Lea, 705, and Memphis *vs.* Band & Ins. Cos., 7 Pickle, 547.

Regarding the present case as one which presents new questions and calls for a construction of the exemption clause in its entirety, we rest our opinion solely upon these grounds.

From the conclusions above reached Chief Justice Snodgrass and Judge McAllister dissent.

The next important question is as to the taxability of stock issued since the adoption of the present constitution of 1870.

The charter provides, sec. 2—

"That the capital stock of said company shall be divided
99 into shares of fifty dollars each, and when two hundred shares shall have been subscribed and the sum of one dollar per share paid thereon the shareholders may meet and elect five directors." * * *

By section No. 4 it is provided:

"It may receive on deposit any and all sums not less than one dollar per week offered as stock deposits, * * * and when such deposit shall amount to $50 it may, at the option of the depositor, become stock in the institution."

It is agreed by stipulation that on May 5th, 1870, the day our present constitution was adopted, the capital stock was $200,000; that on March 17th, 1887, and on sundry days prior to June 1st, 1887, it was regularly increased to $600,000, and that on the 17th of March, 1890, and on sundry days prior to June 1st, 1890, it was again regularly increased to $1,000,000.

By the charter there was no maximum of capital fixed. The charter contemplated an increase of capital stock gradually and at various times as the stock deposits should, at the election of depositors, be turned into stock. The admission that the increase was regularly made closes all inquiry upon that point.

Unless that charter was void from uncertainty, indefiniteness, or a reckless disregard for the public interest, we see no force in the contention made by the State on this point. We think, if valid when granted, the increase could as well be made after as before the present constitution. If the right to so increase was given, it cannot be taken away. Sec. 8 of art. 2 of the constitution of 1870 provides:

100 * * * "No corporation shall be created or its powers increased or diminished by special laws, but the General Assembly shall provide by general laws for the organization of all corporations hereafter created, which laws may at any time be altered or repealed, and no such alteration or repeal shall interfere with or divest rights which have become vested."

Without such constitution- provision the law would be the same.

We think the right given this company in 1856 to increase its stock from time to time was such vested right.

Memphis *vs.* Memphis City Bank, 7 Pickle, 586.

It thus all depends on the legality of the original grant.

Whilst we can see plainly that this corporation might under this charter have withdrawn from all but the charter tax a sum of money the possession of which by one corporation might prove inimical to the public interest, and that the grant was not sufficiently guarded in the matter of amount of capital, yet such, we think, was the contract and as such it must be upheld. It is contended that a charter in which no maximum of capital is fixed is void as opposed to public policy, but we do not find the authorities sustaining this proposition. The question was before this court in State *vs.* Butler, 13 Lea, 407, where it was held or assumed that the increase was legal. Again, the long acquiescence of the State in such increase of capital stock for twenty-five years as to $200,000, for eight years as to $600,000, and for five years as to $1,000,000 may well be considered by this court in passing upon this in-

101 crease of stock. We are constrained to hold that the stock issued since May 5th, 1870, stands (as to taxation) in all respects as does the stock earlier issued.

From the conclusion last announced Judges Caldwell and Wilkes dissent.

Another important question is that of the liability to taxation for the surplus and undivided profits.

Assuming for the present that our revenue laws impose a tax upon the net surplus or upon the surplus and undivided profits, is such law valid when applied to the bank in question, the capital stock of which is exempt from taxation?

In the case of The State *vs.* Phœnix Fire & Marine Ins. Co. we held the surplus for the year 1892 taxable, but by an oral opinion.

It is clear this fund, accurately speaking, is not capital stock, but is an asset of the bank, which it uses in the banking business. It is also clear that good banking in the present age requires the carrying of a proper surplus to meet emergencies, to inspire confidence upon the part of the public, and to keep the capital of the bank unimpaired. National banks are by the acts of Congress required
to accumulate and lay by a surplus of twenty per cent. upon
102 the capital, which would indicate that a surplus to that extent is now regarded by financiers as not too much for such institutions to carry. It is certain such surplus is employed in the legitimate business of the bank, and it is not taxable upon the theory that this fund has been invested or employed in business not within the scope of the corporation as chartered. We cannot rest the case upon that line of decisions of this court and of the U. S. Supreme Court, which hold that where capital is invested in real estate or other property not necessary to the corporate business such property is taxable, notwithstanding the exemption of the capital stock, for those cases rest solely upon the fact of the investment of the fund outside of the necessary corporate business. If the surplus is taxable it must be upon the ground that it is not a part of the capital stock, strictly speaking, but a fund which belongs to the bank and which is employed by it in its business.

The main contention of the defendants is that to tax the surplus is indirectly, but just as certainly, to tax the shareholder, which the State may not do where the shares are exempt from taxation. Until a dividend is declared out of said surplus it is absolutely certain that the shareholders have no title to it. The right and title is in the corporation.

In Lochardt *vs.* Van Alustyne, 31 Mich., 76, Judge Cooly, at p. 78, says:

"A right to a dividend from the profits of a corporation is
103 no debt until the dividend is declared. Until that time the dividend is only something that may possibly come into existence, but the obligation on the part of the corporation to declare it cannot be treated as the dividend itself. * * * A dividend is a fund which the corporation sets apart from its profits to be divided among its members."

Cook on Stock and Stockholders, sec. 534, says:

"A dividend is a corporate profit set aside, declared, and ordered by the proper corporate authorities to be paid to the stockholders on demand or at a fixed time. A dividend becomes the property

of the shareholder, and the shareholder acquires his legal right thereto only when it is regularly declared. Inasmuch as a dividend can be declared only out of the net profits, which may or may not be earned, a stockholder, it is clear, is not absolutely but only conditionally entitled to a dividend, and he is therefore in no proper sense in respect thereto a creditor of the corporation until
104 the dividend is declared and made absolutely payable."

In The People *vs.* The Supervisors of Niagara, 4th Hill, 23, Bronson, J., says:

"It is undoubtedly true that the profits and income are sometimes used as synonymous terms; but, strictly speaking, 'income' means that which comes in or is received from any business or investment of capital without reference to the outgoing expenditures, while '*rpfoits*' generally mean the gain which is made upon any business or investment when both receipts and payment are taken into account."

Here we have the question sharply made: Can a corporation operating under such a charter hold a surplus fund equal to thirty-five per cent. of its capital absolutely free from taxation? We think not. Manifestly this surplus was not put aside to be distributed to the shareholders as dividends, but is held as a reserve fund against contingencies, and which, in the meantime, is, to all *extents* and purposes, used as capital. On the capital stock or shares in same amount it pays the charter tax, but on this surplus it pays no charter tax. If this be legal, the corporation may practically increase its working capital to an unlimited amount and enjoy complete immunity from taxation on the amount in excess of the nominal capital.

In the very recent case of Iowa State Savings Bank *vs.* The City Council of Burlington, N. W. Rep't'r, vol. 61, 851, the supreme court of Iowa held the surplus of a savings bank taxable under an act which provides—

105 "The paid-up capital of all savings banks shall be subject to taxation."

An act of New Jersey provides—

"That all private corporations are to be assessed at the full amount of their capital stock paid in and accumulated surplus."

State *vs.* Butler, 34th New Jersey, 489, involved an assessment under this act on a surplus of over $3,000,000. Judge Van Sycle says:

"The term 'accumulated surplus' in its application to stock companies is well understood to refer to the fund they have in excess of their capital and liabilities. Applying these definitions to the relators will not ease them of the burden imposed. They put their capital at $665,300, in addition to which they have assets of the value of $3,338,882 over and above all liabilities. Exemption from taxation of the assets of the company, which are in excess of $4,000,000, would be manifestly unjust. These assets are made up of the aggregate value of the policies held by its members. By express provision of this act of 1862 persons holding such policies could not be assessed for their value, and if the company cannot be assessed a new mode of putting property beyond the reach of

the tax-gatherer has been discovered. The legislature withdrew the value of the policy from taxation in the hands of the policy-holder upon the theory that they had taxed the company. The company was subjected to be assessed as a corporation without a capital stock; therefore the basis upon which the assessment proceeded was correct."

In St. Louis Mut. Ins. Co. *vs.* Charles, 47 M., 465, the court, Bliss. J., says:

106 "This company, by its own showing, acquired at least three times the amount of its original stock, all of which in private hands would be subjected to taxation. There was no law that exempted it in the hands of the company. The petition alleged that the capital of plaintiff was $100,000, all paid in, and that the tax assessment was $300,000, being for money loaned and on hand belonging to the plaintiff." The court sustained the tax.

The case of The Attorney General *vs.* The Bank, 4th Jones N. C. Equity, 287, arose in construing a charter wherein the State had clearly exempted the franchise. The court say:

"But though the legislature cannot tax the franchise of the bank, they may tax *ad libitum* the dividends or profits of the individual shareholder and the corporate property of the bank, because they are separate from the franchise, and nothing can exempt them from taxation unless there be a special agreement to the contrary between the bank and the State." Quoting—

Gordon *vs.* The Appeal Tax Court, 3 How., 133.
Bank of Cape Fear *vs.* Edwards, 5th Ire., 510.

Here the tax was of the franchise.

An important case in this connection is State *vs.* The Bank of Smyra, 2nd Houston Del., 99. This case, as to taxing the surplus, decides the exact question we have in hand, and is a clear and well-reasoned case by the Chancellor Harrington. The tax in dispute was, under the law of 1885, in terms levying a tax on the surplus earnings of the bank, and the law was sustained.

The U. S. Supreme Court in the Farrington case, at page 686, say:

107 "If a large surplus be accumulated and laid by, that does not form a part of it" (this is the capital). At page 687 same court designate "accumulated earnings" as a distinct object for taxation.

State *vs.* The City Council of Charleston, 5 Rich. Law, 561, holds that where the bank and its stock were released from all taxation a tax by the city on the dividend or income which the stockholder may receive on his shares of the capital stock is void.

After a careful and full consideration of the question we are satisfied the surplus is subject to taxation, provided the State has imposed a tax upon it and it has been legally assessed.

It is by the defendants denied that there is any law authorizing such a tax. The assessing officers have assessed the surplus and undivided profits of this bank at $350,000 for each of the years 1892, 1893, and 1894.

Clearly the surplus is not taxable under section 14, act of 1887, except as it may enter into the value of the capital stock. The reference in that section to surplus is only in that connection, and unless the surplus is taxed under some other provision of law the claim cannot be sustained.

Sec. 1 of assessment act of 1887, chap. 2, p. 24, is as follows:

SEC. 1. "Be it enacted by the General Assembly of the State of Tennessee, That all property, real, personal and mixed, shall be assessed for taxation for State, county and municipal pur-
108 poses, except as is declared exempt in the next section."

After describing the various kinds of property to be taxes subsection 10 of sec. 7 of said act, p. 26, provides:

"All other personal property, whether belonging to individuals, corporations or firms." By the closing clause of sec. 3 of chap. 26, acts of extra session of 1891, it is provided:

"That the surplus and undivided profits in such bank, banking association or other corporation shall be assessable to said bank or other corporation, and the same shall not be considered in the assessment of the stock therein."

We think these acts authorize the assessment of this surplus money in the hands of the defendant bank. We rest the right under these provisions of law and not under sec. 14 of the act of 1887.

The capital and franchise not being subject to taxation, the privilege tax assessed and claimed is void.

The decrees in both cases are reversed, and decrees will here be entered against the corporation in pursuance of this opinion and of the stipulations on file herein.

The Bank of Commerce will pay the costs of this court and of the court below.

GEO. GILLHAM, *Sp. Judge.*

109 THE STATE OF TENNESSEE:

Pleas before the supreme court of said State for the western division thereof, at the April term, A. D. 1895.

Present: The Hon. D. L. Snodgrass, chief justice, and W. D. Beard, J. S. Wilkes, W. C. Caldwell, and W. K. McAlister, associate judges, when the following proceedings were had, to wit:

FRIDAY, *June* 21, 1895.

Supreme Court of Tennessee, April Term, 1895.

STATE OF TENNESSEE, for the Use of The City of Memphis, and The City of Memphis *vs.* BANK OF COMMERCE *et al.*	No. 54, Shelby Chancery Docket.

Be it remembered that this cause came on to be heard upon the transcript of the record from the chancery court of Shelby county,

Tennessee, and, the same having been argued by counsel and considered by the court, the court is of opinion that the shares of stock and the surplus and undivided profits in and of the defendant Bank of Commerce are subject to the taxing power of the State, and the said city and that the exemption thereof set up and claimed by
110 the said defendant and its shareholders — it is ordered, adjudged, and decreed as follows:

First. That complainant The State of Tennessee, for the use of the City of Memphis, have and recover of the said defendant, Bank of Commerce, on account of the taxes upon its shares of stock and surplus and undivided capital for the years 1888, 1889, 1890, 1891, 1892, 1893, and 1894, the sum of $73,701.75, principal, and $17,640.00, interest, principal and interest aggregating the sum of $91,341.75, and the further sum of ten per cent. thereon (except for the taxes of 1888) as compensation for the attorneys and solicitors of the complainants herein, the total recovery aforesaid on behalf of complainant The State of Tennessee, for the use of The City of Memphis, being the sum of ($99,140.00) ninety-nine thousand one hundred and forty dollars.

Second. That complainant The State of Tennessee, for the use of The City of Memphis, have and recover of defendant J. A. Omberg the sum of $143.15 on account of taxes and interest due from him for the years 1891, 1892, 1893, and 1894, the amount aforesaid including 10 per cent. attorneys' fees for complainants' solicitors. This recovery against said Omberg is part of the aforesaid recovery against the Bank of Commerce and will be satisfied upon payment thereof, or upon payment by said Omberg the same will be credited upon the recovery against said bank.

Third. That complainants recover of the said defendant, Bank of Commerce, all the costs of this cause in this court and in the court below.

For all the recoveries aforesaid execution may issue
111 as at law.

The defendants herein contended that the defendant Bank of Commerce was duly organized under the charter granted to the Chattanooga Savings Institution by the act of the legislature of the State of Tennessee passed Feb'y 29, 1856, and being chapter 128 of the acts of 18—; that by virtue of said charter it was entitled to pay and had paid to the State of Tennessee for each of the years herein sued for one-half of one per cent. on each share of its capital stock; that under the terms of its charter said annual payment of one-half of one per cent. was in lieu of all other taxes either on the shares, the franchise, the capital stock, or the surplus and undivided profits, and that the assessment and revenue laws of the State to which the court by this decree gives effect impair the obligation of the alleged charter and contract immunities of the said defendant and its shareholders; that said impairment is in violation of art. 1, sec. 10, of the Constitution of the United States, and that the said statutes of the State of Tennessee are repugnant to the Constitution of the United States and there-

fore null and void. The contention aforesaid was overruled and the claim aforesaid of protection under the Constitution of the United States was denied.

In this cause Hon. W. D. Beard was incompetent, and Hon. Geo. Gilham, having been duly commissioned by the governor and duly sworn as the law directs, sat as special judge in his stead and place.

112 *Bond for Writ of Error and Supersedeas.*

THE STATE OF TENNESSEE, for the Use of THE CITY OF MEMPHIS, *vs.* THE BANK OF COMMERCE and JAMES A. OMBERG.	No. 54, Shelby Chancery Docket.

Know all men by these presents that we, The Bank of Commerce and James A. Omberg, as principals, and S. H. Dunscomb, J. T. Fargason, W. T. Taylor, R. B. Snowden, W. B. Mallory, O. H. P. Piper, John Overton, Jr., Godfrey Frank, as sureties, bind ourselves, jointly and severally, unto The State of Tennessee, for the use of The City of Memphis, in the sum of eighty thousand dollars; for the payment of which, well and truly to be made, we bind ourselves and representatives firmly by these presents.

But the condition of this obligation is such that whereas the above-bounden Bank of Commerce, a corporation by the laws of the State of Tennessee, and James A. Omberg have obtained or are about to obtain a writ of error to the Supreme Court of the United States of America from the supreme court of the State of Tennessee, sitting at Jackson, for the western division of said State, to reverse a judgment rendered by it at its April term, 1895, against the said Bank of Commerce and James A. Omberg in the suit of The State of Tennessee, for the use of The City of Memphis, against the said Bank of Commerce and the said James A. Omberg, said cause being from the chancery court of Shelby county, Tennessee, and the judgment being as follows: "In favor of The State of Tennessee against The Bank of Commerce for the use of the said City of Memphis for taxes for the following sums: Ninety-
113 nine thousand one hundred and forty dollars, and in favor of The State of Tennessee, for the use of The City of Memphis, and against said J. A. Omberg for the sum of one hundred and forty-three $\frac{15}{100}$ dollars:

Now, therefore, if the said Bank of Commerce and James A. Omberg shall prosecute said writ of error to effect or, if they fail to make good their plea, shall pay the aforesaid decrees, including just damages for delay and costs and interests on the appeal, and, moreover, abide by and perform the judgments and decrees of the Supreme Court of the United States, then this obligation to be void; otherwise to remain in full force and effect.

In testimony whereof we have hereunto set our hands and seals this the — day of June, 1895.

[Seal Bank of Commerce, Memphis, Tenn.]

BANK OF COMMERCE,
By S. H. DUNSCOMB, *Pres't*,
By J. A. OMBERG, *Cash'r*.
J. A. OMBERG.
S. H. DUNSCOMB.
J. T. FARGASON.
W. T. TAYLOR.
R. B. SNOWDEN.
W. B. MALLORY.
O. H. P. PIPER.
JNO. OVERTON, JR.
GODFREY FRANK.

Accepted and approved

D. L. SNODGRASS,
Chief Justice Supreme Court Tennessee.

Filed 22 day of June, 1895.

JNO. W. BUFORD, *Clerk.*

114 *Writ of Error.*

THE STATE OF TENNESSEE, for the Use of THE CITY OF MEMPHIS,
vs.
THE BANK OF COMMERCE and JAMES A. OMBERG.
} No. 54, Shelby Chancery Docket.

The President of the United States to the honorable judges of the supreme court of the State of Tennessee, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said supreme court of the State of Tennessee, sitting at Jackson, Tennessee, for the western division of said State, in said district, before you or some of you, at the April term, A. D. 1895, of said supreme court, being the highest court of law or equity in said State of Tennessee in which a decision could be had in a suit between The State of Tennessee, for the use of The City of Memphis, as complainant and plaintiff, and The Bank of Commerce and James A. Omberg, as defendants, wherein was drawn in question the validity of a charter between the State of Tennessee and the Bank of Commerce, under article 1, section 10, of the Constitution of the United States, and the decision of the said supreme court of Tennessee was against the validity of the said charter or contract between the State of Tennessee and the Bank of Commerce and between the State of Tennessee and James A. Omberg, and denied the exemptions from taxation claimed
115 under said contract or charter so specifically set up or claimed under said clause of the said Constitution of the United

fore null and void. The contention aforesaid was overruled and the claim aforesaid of protection under the Constitution of the United States was denied.

In this cause Hon. W. D. Beard was incompetent, and Hon. Geo. Gilham, having been duly commissioned by the governor and duly sworn as the law directs, sat as special judge in his stead and place.

112 *Bond for Writ of Error and Supersedeas.*

THE STATE OF TENNESSEE, for the Use of THE CITY OF MEMPHIS, *vs.* THE BANK OF COMMERCE and JAMES A. OMBERG.	No. 54, Shelby Chancery Docket.

Know all men by these presents that we, The Bank of Commerce and James A. Omberg, as principals, and S. H. Dunscomb, J. T. Fargason, W. T. Taylor, R. B. Snowden, W. B. Mallory, O. H. P. Piper, John Overton, Jr., Godfrey Frank, as sureties, bind ourselves, jointly and severally, unto The State of Tennessee, for the use of The City of Memphis, in the sum of eighty thousand dollars; for the payment of which, well and truly to be made, we bind ourselves and representatives firmly by these presents.

But the condition of this obligation is such that whereas the above-bounden Bank of Commerce, a corporation by the laws of the State of Tennessee, and James A. Omberg have obtained or are about to obtain a writ of error to the Supreme Court of the United States of America from the supreme court of the State of Tennessee, sitting at Jackson, for the western division of said State, to reverse a judgment rendered by it at its April term, 1895, against the said Bank of Commerce and James A. Omberg in the suit of The State of Tennessee, for the use of The City of Memphis, against the said Bank of Commerce and the said James A. Omberg, said cause being from the chancery court of Shelby county, Tennessee, and the judgment being as follows: "In favor of The State of Tennessee against The Bank of Commerce for the use of the said City of Memphis for taxes for the following sums: Ninety-
113 nine thousand one hundred and forty dollars, and in favor of The State of Tennessee, for the use of The City of Memphis, and against said J. A. Omberg for the sum of one hundred and forty-three $\frac{15}{100}$ dollars:

Now, therefore, if the said Bank of Commerce and James A. Omberg shall prosecute said writ of error to effect or, if they fail to make good their plea, shall pay the aforesaid decrees, including just damages for delay and costs and interests on the appeal, and, moreover, abide by and perform the judgments and decrees of the Supreme Court of the United States, then this obligation to be void; otherwise to remain in full force and effect.

In testimony whereof we have hereunto set our hands and seals this the — day of June, 1895.

[Seal Bank of Commerce, Memphis, Tenn.]

BANK OF COMMERCE,
By S. H. DUNSCOMB, *Pres't*,
By J. A. OMBERG, *Cash'r*.
J. A. OMBERG.
S. H. DUNSCOMB.
J. T. FARGASON.
W. T. TAYLOR.
R. B. SNOWDEN.
W. B. MALLORY.
O. H. P. PIPER.
JNO. OVERTON, JR.
GODFREY FRANK.

Accepted and approved

D. L. SNODGRASS,
Chief Justice Supreme Court Tennessee.

Filed 22 day of June, 1895.

JNO. W. BUFORD, *Clerk*.

114 *Writ of Error.*

THE STATE OF TENNESSEE, for the Use of THE CITY OF MEMPHIS,
vs.
THE BANK OF COMMERCE and JAMES A. OMBERG.
} No. 54, Shelby Chancery Docket.

The President of the United States to the honorable judges of the supreme court of the State of Tennessee, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said supreme court of the State of Tennessee, sitting at Jackson, Tennessee, for the western division of said State, in said district, before you or some of you, at the April term, A. D. 1895, of said supreme court, being the highest court of law or equity in said State of Tennessee in which a decision could be had in a suit between The State of Tennessee, for the use of The City of Memphis, as complainant and plaintiff, and The Bank of Commerce and James A. Omberg, as defendants, wherein was drawn in question the validity of a charter between the State of Tennessee and the Bank of Commerce, under article 1, section 10, of the Constitution of the United States, and the decision of the said supreme court of Tennessee was against the validity of the said charter or contract between the State of Tennessee and the Bank of Commerce and between the State of Tennessee and James A. Omberg, and denied the exemptions from taxation claimed
115 under said contract or charter so specifically set up or claimed under said clause of the said Constitution of the United

States, and wherein the said Bank of Commerce and the said James A. Omberg claimed in the pleadings in said cause that under said charter or contract between the State of Tennessee and the Bank of Commerce and between the State of Tennessee and James A. Omberg the capital stock of the said bank and the franchises and the surplus and undivided profits of said bank were each and every of them exempt from taxation, and the said James A. Omberg and the said Bank of Commerce claimed in the pleadings also in said cause that under the said charter or contract the shares of stock in said bank were exempt from taxation, and the complainant in the said bill claimed that the said Bank of Commerce was liable to pay it for the privilege of doing business in the city of Memphis an annual sum, and also to pay it ad valorem taxes upon its capital stock and upon its surplus and undivided profits, or, if not liable so to pay them, its shareholders were liable to pay ad valorem taxes on their shares of stock, and particularly was James A. Omberg liable to pay ad valorem taxes on the shares of stock that he held in the said bank, and accordingly the capital and surplus of the said bank the State of Tennessee, for the use of The City of Memphis, had assessed for taxation, as well also as the shares of stock in said bank, and sought to collect and force the payment of the taxes so assessed and the privilege tax under the several acts of the General Assembly set forth in the pleadings, to wit, chapter 1 and chapter 2 of the session acts of 1887, and chapter 96 and chapter 130 of the session acts of 1889, and chapter — of the extra
116 session acts of 1891, and the said court held that the said acts were valid and constitutional and not in conflict with article 1, section 10, of the Constitution of the United States of America, and the said Bank of Commerce and the said James A. Omberg were subject to the payment of taxes for and including the year 1888, as follows: 1888, 1889, 1890, 1891, 1892, 1893, 1894.

And in said decision a manifest error hath happened, to the great damage of the said Bank of Commerce and James A. Omber-, as by their complaint appears, we, being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment herein be given, that the-, under your seal, distinctively and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington, in the District of Columbia, on the 2nd Monday of October, A. D. 1895, next, in the Supreme Court to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done herein to correct what error what of right and according to the law and custom of the United States should be done.

Witness the Hon. Melville W. Fuller, Chief Justice of the said Supreme Court of the United States, and the seal of the circuit court of the United States for the western district of Tennessee, west-

117 ern division, at Memphis, Tennessee, this the 22 day of June, A. D. 1895, and of our Independence the 119 year.

Issued 22 June, 1895.

[SEAL.]

JOHN B. CLOUGH,
Clerk of said Circuit Court.

Approved and allowed.

D. L. SNODGRASS,
Chief Justice Supreme Court Tennessee.

Filed 22 day of June, 1895.

JNO. W. BUFORD, *Clerk.*

118 *Citation.*

Filed June 22, 1895.

In the Supreme Court of Tennessee, at Jackson, April Term, 1895.

STATE OF TENNESSEE, for the Use of THE CITY OF MEMPHIS, *vs.* THE BANK OF COMMERCE and JAMES A. OMBERG.	No. 54, Shelby Chancery Docket.

To the above complainants, The State of Tennessee, for the use of The City of Memphis, Greeting:

You are hereby cited and admonished to be and appear at the Supreme Court of the United States, to be holden at Washington, in the District of Columbia, on the 2nd Monday of October, A. D. 1895, pursuant to an appeal and writ of error filed in the clerk's office of the supreme court of the State of Tennessee, sitting at Jackson, Tennessee, for the western division of said State, at its April term, 1895, and taken and issued to the said supreme court in the above-entitled cause, wherein The Bank of Commerce and James A. Omberg are appellants in error and you are defendants in error, to show cause why the judgments in said appeal and writ of error mentioned and rendered in said cause by said supreme court against them should not be corrected and why speedy justice should not be done to the parties in that behalf.

119 Witness the Hon. David L. Snodgrass, chief justice of the supreme court of Tennessee, this 22 day of June, 1895.

D. L. SNODGRASS,
Chief Justice Supreme Court of Tennessee.

Due and legal service of the within is accepted for the State of Tennessee, for the use of The City of Memphis, June 22, 1895.

S. P. WALKER,
C. W. METCALF,
F. T. EDMONDSON,
Solicitors.

120 *Assignment of Error.*

Filed June 22, 1895.

STATE OF TENNESSEE, for Use of THE CITY OF MEMPHIS,
vs.
THE BANK OF COMMERCE and JAMES A. OMBERG.
No. 54, Shelby Chancery Docket.

Come the appellants, and say that in the record and proceedings in the above-entitled cause there is manifest error, and they assign for error the following portion of the decree of the supreme court of the State of Tennessee:

"Be it remembered that this cause came on to be heard upon the transcript of the record from the chancery court of Shelby county, Tennessee, and, the same having been argued by counsel and considered by the court, the court is of opinion that the shares of stock and the surplus and undivided profits in and of the defendant Bank of Commerce are subject to the taxing power of the State, and that the exemption thereof set up and claimed by the said defendant and its shareholders is not well founded.

And it appearing from the record that the defendant Bank of Commerce has assumed any and all liability that might be established herein against its shareholders, it is ordered, adjudged, and decreed as follows, viz:

First. That complainant The State of Tennessee, for use of The City of Memphis, have and recover of the said defendant, Bank of Commerce, on account of the taxes upon its shares of stock and surplus and undivided profits for the years 1888, 1889, 1890, 1891, 1892, 1893, & 1894 the sum of $73,701.75, principal, and $17,640.00, interest, principal and interest aggregating the sum of
121 $91,341.75, and the further sum of ten per cent. thereon (except for the taxes of 1888) as compensation for the attorneys and solicitors of the complainants herein, the total recovery on behalf of said complainant, The State of Tennessee, for the use of The City of Memphis, being for the sum of ($99,140.00) ninety-nine thousand one hundred and forty dollars.

Second. That complainant The State of Tennessee, for the use of The City of Memphis, have and recover of defendant J. A. Omberg the sum of $143.15 on account of taxes and interest due from him for the years 1891, 1892, 1893, and 1894, the amount aforesaid including ten per cent. attorneys' fees for complainants' solicitors. This recovery against said Omberg's part of the aforesaid recovery against the Bank of Commerce *and* will be satisfied upon payment thereof, or upon payment by said Omberg the same will be credited upon the recovery against said bank.

Third. That complainants recover of the said defendant, Bank of Commerce, all the costs of this cause in this court and in the court below.

For all the recoveries aforesaid execution may issue as at law."

122 Because appellants say that the clause of the charter of the Bank of Commerce granted by the General Assembly of the State of Tennessee, being the last paragraph of the 3rd section of chapter 128 of the session acts of 1856, passed the 29th day of February of that year, and in the following words, to wit: "Said institution shall have a lien on the stock for debts due it by the stockholders before and in preference to other creditors, except the State for taxes, and shall pay to the State an annual tax of one-half of one per cent. on each share of capital stock, which shall be in lieu of all other taxes," is a valid contract between the State of Tennessee and the Bank of Commerce and its shareholders, and the acts of the General Assembly of Tennessee as aforesaid sustained in said decree are in violation of said contract, in that they deny the appellant Bank of Commerce and its shareholders and the appellant James A. Omberg the exemption from taxation contracted for to said company by the said above clause of its charter and are violative of article I, section 10, of the Constitution of the United States.

And appellants also assign for error as follows: That in and by said decree so entered by the supreme court of Tennessee the supreme court proceeded erroneously on the ground that the several statutes of Tennessee mentioned and specified in the pleadings in this cause, and under the authority of which the various taxes were levied and assessed that are set forth in said decree and for the amount of which judgment was thereby rendered against the appellants,

123 were valid and constitutional as against the appellants and each of them and for the assessment and levy of taxes against the appellants, and that the same did not impair the obligation of the contract claimed by the appellants to have been created between the State of Tennessee and the appellants by chapter 128 of the session acts of 1856, passed February 29th, and particularly by the 6th section of said act, and the last paragraph of the 3rd section of said act, and the 4th section of said act, whereby it was provided as follows: "That Benjamin Chandler, Samuel R. McCamy, James Whitesides, John L. M. French, Edwin Marsh, James E. Warner, their associates and successors, be, and they are hereby created a body politic and corporate by the name and style of the Chattanooga Savings Institute and by that name shall have succession; sue and be sued; plead and be pleaded; and they are hereby invested with all the powers, privileges, rights and immunities, and subjected to the same liabilities and restrictions that are given and imposed in the foregoing sections, upon the Gayoso Savings Institution. The corporation chartered by this section shall be located in the city of Chattanooga." and that "the bank shall pay to the State an annual tax of one-half of one per cent. on each share of capital stock, which shall be in lieu of all other taxes * * * and may purchase and hold a lot of ground for use as a place of business, and at pleasure sell and exchange the same * * * may receive on deposit any and all sums not less than one dollar per week, offered as stock de-

posits * * * and when such deposits shall amount to
124 $50.00, it may at the option of the depositor become stock in the institution * * * and twice per year declare and pay to the stockholders a dividend of profits," which contract has been set up in the said cause by the appellants in their defence against the recovery of the said taxes and the right claimed by the appellants under the Constitution of the United States that the said contract shall not be impaired by subsequent legislation of the State of Tennessee, as was attempted to be done by said statutes, and said rights so set up by the appellants were in and by said decree wrongfully denied, all of which by the record of this cause fully appears. Wherefore the appellants pray that the said decree may be reversed.

J. A. TAYLOR,
W. H. CARROLL,
R. J. MORGAN,
Counsel for Appellants.

125 *Certificate.*

Supreme Court of Tennessee, April Term, A. D. 1895.

STATE OF TENNESSEE, for the Use of THE CITY OF MEMPHIS,
vs.
THE BANK OF COMMERCE and JAMES A. OMBERG.
} No. 54, Shelby Chancery Docket.

I, David L. Snodgrass, chief justice of the supreme court of Tennessee, the highest court in the State of Tennessee, either at law or in equity, composed of David L. Snodgrass, chief justice; John S. Wilkes, William K. McAlister, W. C. Caldwell, and Geo. Gilliam, associate justices, hereby certify that in the above-styled cause, lately pending in the supreme court of Tennessee and decided against the plaintiff in error, The Bank of Commerce and James A. Omberg, there was drawn into question the validity of the following part of the charter or contract between the State of Tennessee and the Bank of Commerce, to wit: "Said institution shall have a lien on the stock for debts due it by the stockholders in preference to other creditors, except the State for taxes, and shall pay to the State an annual tax of one-half of one per cent. on each share of capital stock, which shall be in lieu of all other taxes," and the following other part: "It may receive on deposit any and all sums not less than one dollar per week, offered as stock deposits" * * * "and when such deposits shall amount to $50.00, it may, at the option of the depositor, become stock in the institution" * * * "twice per year declare and pay to the stockholders a dividend of profits,"
under article 1, section 10, of the Constitution of the United
126 States, and wherein said parts of the charter or contract aforesaid the said Bank of Commerce and James A. Omberg claimed in the pleadings, as appears from the record, that under the

said above provisions and under said charter or contract between the State of Tennessee and the Bank of Commerce and between the State of Tennessee and James A. Omberg the said Bank of Commerce was exempt from taxation upon its property in the State of Tennessee under a specific and valid contract with the State of Tennessee as aforesaid and James A. Omberg was exempt from taxation upon his shares in said bank, as were the other shareholders in said bank, under a specific and valid contract with the State of Tennessee as aforesaid, and that the decision of the supreme court of Tennessee, sitting at Jackson, Tennessee, at its April term, 1895, was against the said exemption from taxation claimed under the said contract or charter of said bank with the State of Tennessee, and in said decision there was also drawn in question the validity of the aforesaid assessment and revenue laws of the State of Tennessee, as set forth in the pleadings of the complainant and in said decree of the supreme court, being the aforesaid session acts of 1887, 1889, and 1891, under which statutes the complainant caused to be assessed the taxes decreed against the Bank of Commerce and James A. Omberg and sought to enforce the payment of the taxes so assessed, and the decision of the said supreme court of Tennessee was in favor of the validity and constitutionality of the said acts of Tennessee, because the court held that the exemption from taxation, other than the commutation tax annually required to be paid under the
127 above clause of the contract and charter between the State of Tennessee and the said Bank of Commerce, did not embrace the taxes assessed — the said Bank of Commerce and the said James A. Omberg, notwithstanding the said bank claimed, as did the said James A. Omberg, that there existed a contract between the State and the said bank that conferred by contract an immunity from taxes claimed, and that the subsequent laws set forth in the pleadings impaired those rights.

Witness the Hon. David L. Snodgrass, chief justice of the supreme court of Tennessee, this 22 day of June, 1895.

D. L. SNODGRASS,
Chief Justice Supreme Court of Tennessee.

Filed 22 day of June, 1895.

JNO. W. BUFORD, *Clerk.*

128 STATE OF TENNESSEE, }
Madison County. }

I, John W. Buford, clerk of the supreme court of said State for the western division thereof, at Jackson, do hereby certify that the foregoing is a true, perfect, and complete copy of the transcript, decrees of the supreme court, bonds, writs of error, citations, and assignment of errors, and all other papers connected with this case in the case of State of Tennessee *vs.* Bank of Commerce, No. 54, Shelby C. D., as appears of record now on file in my office.

In testimony whereof I have hereunto set my hand and affixed the seal of the court, at office, in the city of Jackson, on this the 13th day of July, 1895, and the 120th year of the Independence of the United States.

Seal Supreme Court of Tennessee, Western Division, Jackson, Tenn.

JNO. W. BUFORD, *Clerk.*

Endorsed on cover: Case No. 15,958. Tennessee supreme court. Term No., 668. The Bank of Commerce and James A. Omberg, plaintiffs in error, *vs.* The State of Tennessee, for the use of The City of Memphis. Filed July 26, 1895.